

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

HERBERT R. LEWIS, JR.,)
Plaintiff,)
v.)
STATE OF OKLAHOMA, et al.,)
Defendants.)
No. CIV-16-633-F

REPORT AND RECOMMENDATION

Plaintiff, a state pretrial detainee appearing *pro se*, filed this civil rights action pursuant to 42 U.S.C. § 1983. On June 10, 2016, the matter was referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. §636(b)(1)(B).

On June 20, 2016, Plaintiff was advised in an Order to Plaintiff to Cure Deficiency (Doc. # 5) that his initial documents were deficient in that he had not submitted an *in forma pauperis* application or paid the filing fee. The Clerk of the Court was directed to mail to Plaintiff by regular mail the appropriate forms, and Plaintiff was directed to cure the designated deficiencies by July 8, 2016.¹ Plaintiff was also advised that failure to comply

¹The Court's docket in this case reflects that the forms were indeed mailed to Plaintiff on June 20, 2016, at his last known address.

with the Order would result in a recommendation that the action be dismissed without prejudice and without further notice.

To this date, Plaintiff has not complied with the Court's Order. He has not complied with the Court's Order by either paying the filing fee or submitting an *in forma pauperis* application. Nor has he requested an extension of time to comply with the Court's Order.

The undersigned finds that Plaintiff's failure to comply with this Court's Order, together with the Court's right and responsibility to manage and control its case load, warrants dismissal of this action without prejudice. See Nasious v. Two Unknown B.I.C.E. Agents, 492 F.3d 1158, 1161 n. 2, 1162 (10th Cir. 2007)(noting the court applies Fed. R. Civ. P. 41(b) to allow *sua sponte* dismissal for "failure to . . . comply with the rules of civil procedure or court's orders").

RECOMMENDATION

Accordingly, it is recommended that Plaintiff's cause of action be dismissed without prejudice. Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court on or before August 8th, 2016, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. Failure to make timely objection to this Report and Recommendation waives the right to appellate review of both the factual findings and the legal issues contained herein. Moore v. United States, 950 F.2d 656, 659 (10th Cir. 1991).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter, and any pending motion not specifically addressed

herein is denied.

ENTERED this 18th day of July, 2016.


GARY M. PURCELL
UNITED STATES MAGISTRATE JUDGE